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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1109 OF 2005

Sayyad Ammannulla Ibrahim ... Appellant.
Vs.
Ismail Rasulbhai Shaikh & Ors. ...Respondents.

Mr. V.G. Mujumdar for the appellant.
Mr. P.K. Hushing for the respondents.

CORAM : ANOOP V. MOHTA,J.

DATED : 16th July, 2007

P.C.

1. The original plaintiffs is a trust, registered under the Bombay Trusts Act for Muslim Jamat Masjid Trust.

2. The suit was filed for possession of land in a block No. 1342 situated at Warvand, Tal. Daund and for mesne profit.

3. Based on the averments made and the documents placed on record, apart from the earlier litigation between the parties, regarding the ownership and titling the land in question, both the courts came to the conclusion and rightly said that the property described is owned by the Trust. The defendant failed to prove the ownership of the suit property by adverse possession. The suit, therefore, as filed for

possession before prior permission of the charity commissioner was rightly held to be necessary. The conclusion, therefore, arrived at by the Courts below of granting possession cannot be said to be perverse or contrary to the record.

4. The learned counsel appearing for the appellant firstly submitted that in a suit filed, trust was not a party. The fact just cannot be overlooked is that the appeal is preferred by the trespassers-appellant and not by the trust or trustees. There was no such objection raised about the said issue. Both the parties contested the said matter and knowing fully that the property belongs to the trust and specially when the earlier proceedings, the appellant trespassers failed to prove the ownership.

5. The further contention is that he became owner of the suit property by adverse possession has also no force. The basic contention that the suit property was purchased long back i.e. on 25/03/1920 by registered sale-deed by the original defendant’s grandfather and therefore, they are in possession and enjoyment of the suit land and therefore, the suit is barred by the law of limitation. The party who is

claiming to be owner of the land based on the registered deed and make the positive averments, but failed to prove the case other alternative submission that they became owner of the adverse possession is untenable. The suit for adverse possession has always the foundation of claiming adverse possession from the inception of the dispute or at any other stage. Such alternative claim as raised, is therefore, rightly dismissed by the Court.

6. The learned counsel appearing for the respondents, further submitted that in a prior suit between the parties as it was concluded at the later stage and it has been declared that the defendants and appellant-trespasser is not the owner of the said land as he failed to prove the ownership, based upon the said documents, the trust and trustees, therefore, preferred the present suit for possession against the appellants being the trespassers on the trust property. There is force in the contention as raised.

7. Taking all this into account and considering the concurrent findings arrived at by the Courts below and as there is no perversity, there is no reason to interfere in the findings. Resultantly, the Second

Appeal is dismissed. No costs.

[ANOOP V. MOHTA, J.]